

No. 17-396

In the Supreme Court of the United States

VIRGINIA LAY,

Petitioner,

v.

SINGING RIVER HEALTH SYSTEM,

Respondent.

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit*

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Has Petitioner demonstrated a compelling reason for this Court to review a decision of the United States Court of Appeals for the Fifth Circuit that affirmed the District Court's decision to grant Singing River Health System's motion for summary judgment?

LIST OF PARTIES

The following is a list of all parties to the proceedings in the court below, as required by Rule 24.1(b) and Rule 29.1 of the Rules of the Supreme Court of the United States.

1. Virginia Lay, Petitioner; and
2. Singing River Health System, Respondent.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Respondent Singing River Health System makes the following disclosures:

1. *Identify any parent corporations:*

Singing River Health System does not have a parent corporation.

2. *Identify any publicly-held corporation that owns ten percent or more of Respondent's stock:*

Singing River Health System does not have any stock. Thus, there is no publicly held company that owns 10% or more of Singing River Health System's stock.

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OPINIONS BELOW

1. *Virginia Lay v. Singing River Health System*, Civ. No. 1:15cv130-LG-RHW, 190 F. Supp. 3d 599 (S.D. Miss. 2016)
2. *Virginia Lay v. Singing River Health System*, No. 16-60431, 694 Fed. App'x. 248 (5th Cir. 2017)

JURISDICTION

This Court may exercise jurisdiction pursuant to 28 U.S.C. § 1254(1). On June 19, 2017, the United States Court of Appeals for the Fifth Circuit affirmed the District Court's decision to grant Singing River Health System's motion for summary judgment.

INTRODUCTION

Petitioner Virginia Lay ("Ms. Lay") seeks review of the Fifth Circuit Court of Appeal's June 19, 2017 Opinion (the "Opinion"), but she fails to present a compelling reason why this Court should grant her Petition for Certiorari (the "Petition"). Instead of identifying an actual error committed by the Fifth Circuit, she focuses her Petition on the alleged "disturbing and widespread" trend by district courts to grant summary judgment in employment discrimination cases. Even if this trend in fact exists, which Ms. Lay does not prove, it does not warrant disturbing the Fifth Circuit's Opinion, which is founded in well-settled precedent.

Ultimately, where a plaintiff fails to present evidence of a genuine dispute on an essential element of her claim, summary judgment is appropriate. That

is precisely what occurred in this case, and Ms. Lay's Petition should be denied as a result.

STATEMENT OF THE CASE¹

Ms. Lay is a former employee of Respondent Singing River Health System (the "System"). In early 2014, the System learned of an \$88 million accounting shortfall that prompted an immediate System-wide response to a financial crisis. Through this process, Ms. Lay's department was restructured and her position (along with the position of her supervisor and a litany of other System employees) was eliminated. In her lawsuit, Ms. Lay alleged that the System selected her position for elimination because of her age: sixty-four at the time of her separation. Because no reasonable jury could find that the System discriminated against Ms. Lay because of her age, the System moved for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. With nothing more than her own conclusory allegations, and in apparent disregard for the financial crisis the System was experiencing, Ms. Lay argued to both the District Court and the Fifth Circuit that the System's decision to eliminate her position was discriminatory.

Relying on well-established precedent, the District Court granted the System's motion for summary judgment and the Fifth Circuit affirmed it. Ms. Lay now petitions this Court for a third review. Tellingly,

¹ The System includes this Statement to highlight certain liberties that Ms. Lay took when detailing the underlying facts in her Petition. All facts contained herein are supported by the record, and both the District Court and Fifth Circuit adopted them in their respective opinions.

she focuses on the alleged widespread practice of lower court judges drawing inferences of non-discrimination in employment discrimination cases instead of her inability to create a genuine factual dispute concerning the System's alleged discriminatory animus. Ms. Lay's Petition does not compel this Court to action.

I. Procedural Background

Ms. Lay filed a lawsuit in April 2015, alleging age discrimination. The System moved to dismiss Ms. Lay's single claim on April 15, 2016, via motion for summary judgment. **App. 7.** After the parties completed the briefing, the Chief District Judge for the District Court of the Southern District of Mississippi, Louis Guirola, Jr., granted Singing River's motion for summary judgment, expressly holding that Ms. Lay failed to provide competent summary judgment evidence supporting her allegations that the System terminated her employment because of her age. *See Virginia Lay v. Singing River Health System*, Civ. 190 F. Supp. 3d 599 (S.D. Miss. 2016). Ms. Lay appealed that decision to the United States Court of Appeals for the Fifth Circuit. *See Virginia Lay v. Singing River Health System*, 694 Fed. App'x. 248 (5th Cir. 2017). The Fifth Circuit panel unanimously affirmed that summary judgment was proper.

II. Factual Background

A. Ms. Lay begins working for the System.

Singing River Health System is a community owned, not-for-profit health service provider. In 1999, Ms. Lay began working for the System as the Director of Managed Care. At the time the System hired her, she was approximately fifty years old. Ms. Lay's job

duties included managed care contracting, contract review, working with insurance companies, and managing Premier Health – a physician hospital organization. Though Ms. Lay reported to various individuals during her tenure, she began reporting to Chris Morgan, the Vice President of Clinical Integration, during her last year when his department assumed responsibility over managed care. At the time Ms. Lay began reporting to Mr. Morgan, Mr. Morgan was approximately fifty years old. **App. 2.**

B. The System experiences a financial crisis.

In early 2014, the System announced the discovery of an \$88 million shortfall caused by an overstatement of accounts receivable. On the verge of bankruptcy, the System was forced to evaluate every position in the organization, as well as all of its current practices. The System engaged a consultant – The Godbey Group of Texas – to analyze the System’s contracts, and it reached the conclusion that there was an opportunity for increased rates in certain managed care contracts. **App. 2-3.** As part of its overall response to the shortfall, it was clear that the System needed to go in a different direction and make significant changes.

After learning of the \$88 million financial shortfall, Mr. Morgan and Mr. Holland, the System’s Chief Executive Officer, met to discuss the future of clinical integration and managed care. In the first conversation, Mr. Holland advised Mr. Morgan the department would need to be restructured. From there, Mr. Morgan met with Mr. Summerlin, the Chief Human Resource Officer, as he had been charged with serving as an advisor to department leaders as each department’s performance was evaluated. It was

agreed that the role of Mr. Morgan's department could be streamlined and that one person could perform the remaining portions of both Ms. Lay's and Mr. Morgan's duties in a lower-level management capacity. **App. 3.** Mr. Morgan and Mr. Summerlin presented this proposal to Mr. Holland and obtained his approval to move forward. During the conversation, Mr. Holland did inquire as to Ms. Lay's retirement eligibility because he wanted to ensure she received the maximum amount of benefits available to her. **App. 14.** Ultimately, through this process, Ms. Lay's position was eliminated. **App. 3.**

The decision to eliminate Ms. Lay's position reflected the System's bigger plan to restructure the entire senior leadership team. As part of the overall response to the \$88 million shortfall, numerous employees were laid off, positions were eliminated, and departments were restructured. **App. 11.**

C. Ms. Lay separates from employment.

On April 22, 2014, Ms. Lay met with Mr. Morgan and Mr. Summerlin. In that meeting, Ms. Lay asserted she was told that she had to retire. Mr. Summerlin expressed that, since Ms. Lay was eligible for retirement, the System would permit her to work through June 2014 in order to maximize her retirement benefits. **App. 4.**

On April 25, 2014, Mr. Morgan emailed the leadership team to announce Ms. Lay's retirement. Ms. Lay assisted in editing the email. At some point, however, Ms. Lay changed her mind. On May 7, 2014, she emailed Mr. Morgan a letter that indicated her unwillingness to retire because it would create a

financial hardship for her. A short time later, Ms. Lay again met with Mr. Morgan and Mr. Summerlin about her retirement. Mr. Morgan and Mr. Summerlin confirmed to Ms. Lay that her position was being eliminated, and advised Ms. Lay she could apply for other jobs within the System. Ms. Lay was again encouraged to monitor the System's website for job postings of interest to her before her position ended. **App. 4.** Ms. Lay's last day of work with the System was June 13, 2014. At the time of her retirement, Ms. Lay was earning an annual salary of \$160,000. **App. 5.**

Following her separation, Ms. Lay made scant efforts to find comparable employment. Indeed, she acknowledged she had a singular conversation with a professional at another hospital who told her that hospital was not looking to fill a position comparable to the one she held with the System. Her brief search concluded when she accepted a full-time job earning \$3,000 per month. **App. 5.**

Just before Ms. Lay retired (and within a month of formulating the restructuring plan), Mr. Morgan announced his own resignation. In light of the financial challenges the System was facing, he understood that his position was going to be eliminated and/or merged such that the full scope of what he was doing would not be continued. **App. 3-4.**

D. The System creates the Director of Collaborative Care position.

In the wake of the elimination of Ms. Lay's position, Lee Bond, Chief Financial Officer and the person responsible for the financial operations of the entire System, assumed a supervisory role over her former

department. Mr. Bond tapped Brian Argo, the Executive Director of Finance who had begun working for the System before Ms. Lay's separation, to temporarily take over the duties of running the managed care department. In this dual role, Mr. Argo oversaw some of the work Ms. Lay had previously performed while also performing the duties for the Executive Director of Finance position. At the time, Mr. Argo was thirty years old and had a master's degree. Before joining the System, he served as a vice president and chief revenue officer for the Children's Hospital Medical Center in Omaha, Nebraska. **App. 5-6.**

Meanwhile, the System took steps to create a new position into which parts of both Ms. Lay's and Mr. Morgan's positions would be merged and to which new duties would be added. The new position would entail both collaborative care and managed care elements, as well as some analytical elements and population health initiatives. A number of these duties had never been performed by Ms. Lay while an employee of the System. **App. 6.**

The System posted the position in November 2014, and hired Justin Rickley (then thirty-two) to fill the position in January 2015. While Mr. Rickley has responsibility over managed care contracting, he also performed additional duties, such as contract modeling and analysis, and monitoring the System's population health initiative. Mr. Rickley's annual salary at the time of his hire was \$110,000. **App. 6.**

**REASONS FOR DENYING THE PETITION
FOR CERTIORARI**

I. The Fifth Circuit correctly held that Ms. Lay failed to demonstrate a genuine dispute of material fact regarding whether age was the reason behind the System’s decision to eliminate her position.

The Fifth Circuit’s Opinion does not conflict with any decision of this Court or any Court of Appeals, nor does it implicate an undecided federal question. *See* SUP. CT. R. 10. Nonetheless, Ms. Lay suggests (albeit indirectly) that review is warranted because the Fifth Circuit did “not draw all reasonable inferences in favor of the nonmoving party and did make credibility determinations and did weigh the evidence.” **Pet. Cert. 11** (internal punctuation removed). This is false.

A reading of the Opinion makes it clear that Ms. Lay’s case failed because she did not demonstrate that a genuine factual dispute concerning the System’s alleged discriminatory animus existed. **App. 12**. In an attempt to meet this burden, Ms. Lay made the following arguments:

- she was replaced by a younger employee;
- the Director of Collaborative Care Network position entailed 99.9% of her previous job duties under a different title and the System did not save money in eliminating her position;
- she was forced to retire and her retirement status was discussed at a meeting with management;

- former employees also observed or experienced age-related discrimination; and
- statistical evidence supported the inference that the System harbored discriminatory animus.

The Fifth Circuit offered well-reasoned explanations in holding that none of these arguments raised a genuine dispute of material fact regarding the evidence presented to contradict the System’s legitimate, non-discriminatory reason for Ms. Lay’s termination. **App. 12-20.** In her Petition, Ms. Lay recycles some of these arguments (though, mostly to buttress her claim the district courts are depriving employment litigation plaintiffs of their “day in court”), yet she wholly fails to establish a genuine dispute of material fact actually existed. Accordingly, her Petition should be denied because she has failed to demonstrate that the Fifth Circuit’s decision was in error.

II. No other compelling reason warrants review by this Court.

As the crux of her Petition, Ms. Lay advances an apparent public policy argument. Ms. Lay contends this Court should review her case in order to correct lower court judges’ alleged widespread practice of drawing their own inferences of non-discrimination in employment discrimination cases. Offering a dissertation of *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000) – a case counsel for Ms. Lay had the distinction of arguing before this Court – and a cornucopia of scholarly articles, Ms. Lay concludes that this Court should grant her Petition, even though she never actually demonstrates the Fifth Circuit committed error. That is, because this alarming trend

exists, according to her counsel, her case was surely caught in the dragnet and wrongly decided.

This argument, while creative, is not grounds for certiorari. First, it fails to actually prove the alleged trend exists. Notably, Ms. Lay cites no district court cases (besides her own) to flesh out her proposition. Indeed, the most recent law review articles cited in the Petition are more than three years old. Thus, even if this trend is occurring as Ms. Lay portends, there is hardly ample evidence before this Court to allow it to make such a determination on what to do about it. Without ample evidence to support Ms. Lay's fundamental premise, it is inconceivable that Ms. Lay has articulated a compelling reason for this Court's review.

Second, when following Ms. Lay's argument to its logical conclusion, courts at every level must be complicit in this apparent conspiracy to deprive litigants of a jury trial in employment discrimination cases. Of course, because Ms. Lay does not actually identify district court cases evidencing this trend, there is no way to know whether the corresponding appellate court ratified their "disturbing" opinions on appeal. But, because Ms. Lay describes this trend as "widespread," aggrieved parties have the right of appeal, and the standard of review on appeal is *de novo*, one can reasonably assume that Ms. Lay is accusing not only lower courts of "systematically disregarding this Court's precedents in the liberal grant of summary judgment in employment discrimination cases," but also the Circuit Courts. By Ms. Lay's logic, the entire judicial system is tainted (or at least at risk of being tainted) when it comes to these

type of cases. This preposterous proposition is unsupported by the record, *Reeves*, or the bevy of law journal articles offered for consideration.

Given the totality of Ms. Lay's Petition, the only truly logical conclusion that can be reached is that Ms. Lay advanced this "red herring" public policy argument to distract the Court from her repeated failure to show a genuine factual dispute concerning the System's alleged discriminatory animus. Accordingly, her Petition should be denied.

CONCLUSION

The Fifth Circuit's Opinion is consistent with existing precedent and Ms. Lay has failed to establish any compelling reason for this Court to grant her Petition. The System respectfully requests that this Court deny Ms. Lay's Petition for a Writ of Certiorari.

Respectfully submitted,

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